

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA

*

v.

*

SOLOTHAL THOMAS

*

Criminal No.: CCB-04-232

Petitioner.

*

...oOo...

**GOVERNMENT'S MOTION TO DISMISS PETITIONER'S
MOTION TO VACATE PURSUANT TO 28 U.S.C. § 2255**

The United States of America, through its attorneys, Rod J. Rosenstein, United States Attorney for the District of Maryland, and Debra L. Dwyer, Assistant United States Attorney, respectfully submits this Motion to Dismiss Petitioner's Motion to Vacate Pursuant to 28 U.S.C. § 2255. The Petitioner is *pro se*. The government submits the Petitioner's motion should be denied and in support, states the following:

1. On June 28, 2016, Petitioner filed a Motion Under 28 U.S.C. § 2244 For Order Authorizing District Court to Consider Second or Successive Application for Relief under 28 U.S.C. §§ 2254 or 2255 in the United States Court of Appeals for the Fourth Circuit (*In re Thomas*, No. 16-9743).
2. On July 6, 2016, the Fourth Circuit granted authorization for Petitioner to file a second or successive § 2255 motion (ECF 326).
3. Also on July 6, 2016, Petitioner filed a Motion pursuant to 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence by a Person in Federal Custody (ECF 327).
4. In his motion, Petitioner claims that he is entitled to relief pursuant to the decision

in *Johnson v. United States*, 135 S.Ct. 2551 (2015).

5. Pursuant to 28 U.S.C. § 2255(f)(3), a 1-year statute of limitations runs from “the date on which the right asserted was initially recognized by the Supreme Court.”
6. The Supreme Court issued its opinion in *Johnson* on June 26, 2015.
7. Therefore, the deadline for § 2255 Motions filed under *Johnson* was June 26, 2016.
8. Petitioner’s Motion for Authorization was not filed with the Fourth Circuit until June 28, 2016. Petitioner’s Motion to Vacate was not filed with the District Court until July 6, 2016. Both motions were filed after June 26, 2016.
9. Accordingly, Petitioner’s Motion is untimely and should be dismissed.

CONCLUSION

For the reasons stated herein, the government respectfully requests that this Court DISMISS Petitioner’s motion with prejudice. In the event the Court does reach the merits of Petitioner’s pending petition, the government respectfully requests an opportunity to submit briefing opposing his claims.

Rod J. Rosenstein
United States Attorney

By: _____/s/_____
Debra L. Dwyer
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion was mailed to:

Solothal Thomas, #41347-037
Big Sandy USP
P.O. Box 2068
Inez, KY 41224

_____/s/_____
Debra L. Dwyer
Assistant United States Attorney

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA

*

v.

*

SOLOTHAL THOMAS

*

Criminal No.: CCB-04-232

Petitioner.

*

ORDER

Upon motion of the Government, and for the reasons stated in said motion, it is hereby ORDERED this ____ day of _____, 2016, the Petitioner's Motion to Vacate Pursuant to 28 U.S.C. § 2255 is hereby DISMISSED with prejudice.

The Honorable Catherine C. Blake
Chief Judge, United States District Court